

SCHEDULE 6

Powers of enforcement

PART 4

The Secretary of State

SECTION 1

Powers of entry

1. An authorised person may on producing evidence of that person's appointment—
 - (a) at any reasonable time (or, in a situation which in that person's opinion may give rise to a risk of significant pollution to the environment as a result of the use or discharge from an offshore installation of an article or substance, at any time) board any offshore installation;
 - (b) on boarding an offshore installation be accompanied by any other person authorised for those purposes by the Secretary of State and take any equipment or materials that the authorised person thinks may be required;
 - (c) make such examination or investigation as the authorised person considers necessary (including any examination or investigation of an offshore installation, for which purpose the authorised person may install or maintain monitoring or other apparatus on the offshore installation);
 - (d) give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
 - (e) take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) take samples of any thing found on the offshore installation or in the atmosphere or any land, seabed (including the subsoil thereof) or water in the vicinity of the offshore installation;
 - (g) in the case of any thing which the authorised person finds on the offshore installation, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that in the circumstances of the case is necessary);
 - (h) in the case of any such thing mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which the authorised person has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before an examination of it is completed; and
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 11 or 13;
 - (i) require any person who the authorised person has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c)—
 - (i) to attend at a place and time specified by the authorised person;
 - (ii) to answer (in the absence of any person other than persons whom the authorised person may allow to be present and a person nominated to be present by the person

Status: This is the original version (as it was originally made).

- on whom the requirement is imposed) such questions as the authorised person thinks fit to ask; and
- (iii) to sign a declaration of truth of that person's answers;
 - (j) require the production of, and inspect and take copies of or of any entry in—
 - (i) any records which by virtue of any provision of any permit granted under the Offshore Chemicals Regulations 2002(1) are required to be kept;
 - (ii) any records which the authorised person considers it necessary to see for the purposes of any examination or investigation under sub-paragraph (c);
 - (k) require any person to afford the authorised person such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the authorised person considers are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by this Part.

SECTION 2

Notices

2. An authorised person may serve on a person a notice in writing (“an enforcement notice”) if the authorised person is of the opinion that the person has contravened, is contravening or is likely to contravene a listed REACH provision.
3. An enforcement notice must—
 - (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
 - (b) specify the matters that constitute, constituted or, as the case may be, are likely to constitute the contravention;
 - (c) specify the steps that must be taken to remedy or, as the case may be, prevent the contravention; and
 - (d) specify the period within which those steps must be taken.
4. The steps mentioned in paragraph 3(c) include steps that must be taken to remedy any pollution caused by the contravention.
5. Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked, the Secretary of State may undertake any action so required and the reasonable costs and expenses of the Secretary of State's so doing are recoverable as a debt from that person.
6. A person to whom an enforcement notice is addressed must afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers conferred on the Secretary of State by paragraph 5.
7. An authorised person may revoke an enforcement notice.
8. An authorised person may serve on a person a notice in writing (“a prohibition notice”) if the authorised person is of the opinion that where the person has contravened, is contravening or is likely to contravene a listed REACH provision, that contravention involves an imminent risk of pollution.
9. A prohibition notice must—
 - (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
 - (b) specify the risk involved;

(1) [S.I. 2002/1355](#).

- (c) specify the steps that must be taken to remove it and the period within which they must be taken.

10. An authorised person may by notice withdraw a prohibition notice wholly or in part at any time and must withdraw a notice when the authorised person is satisfied that the steps required by the notice have been taken.

11. It is the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part.

SECTION 3

Miscellaneous

12. An answer given by a person in compliance with a requirement imposed under paragraph 1(i) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.

13. In criminal proceedings in which such person as is mentioned in paragraph 12 is charged with an offence to which this paragraph applies, no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

14. Paragraph 13 applies to any offence other than one under—

- (a) regulation 18(1)(e)(ii) of the Offshore Chemicals Regulations 2002⁽²⁾(offences);
- (b) section 5 of the Perjury Act 1911⁽³⁾(false statements made otherwise than on oath);
- (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽⁴⁾(false statements made otherwise than on oath); or
- (d) article 10 of the Perjury (Northern Ireland) Order 1979⁽⁵⁾(false statutory declarations and other false unsworn statements).

15. Nothing in this Part compels the production by any person of a document which—

- (a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court; or
- (b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

16. References in this Part to an “information notice” or a “prohibition notice” have effect only for the purposes of this Part.

(2) S.I. 2002/1355.

(3) 1911 c.6.

(4) 1995 c.39.

(5) S.I. 1979/1714 (N.I. 19).